

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

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| In the Matter of |) | Case No.: 10-O-11036-RAP |
| |) | |
| FRED RUCKER, |) | DECISION AND ORDER OF |
| |) | INVOLUNTARY INACTIVE |
| Member No. 82754, |) | ENROLLMENT |
| |) | |
| <u>A Member of the State Bar.</u> |) | |

Respondent Fred Rucker was charged with several violations of the Rules of Professional Conduct and the Business and Professions Code in connection with a single client matter. He failed to file a competent response to the notice of disciplinary charges (NDC), and his default was entered. The State Bar of California, Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if an attorney’s default is entered for failing to respond to the NDC, and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney’s disbarment.²

¹ Unless otherwise indicated, all references to rules are to this source.
² If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied, and therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on November 29, 1978, and has been a member since then.

Procedural Requirements Have Been Satisfied

On June 15, 2011, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, at his membership records address. The certified mail receipt was returned to the State Bar signed by Sylvia Henry.

Respondent was required to file a response to the NDC on or before July 11, 2011. As no response was timely filed, the State Bar filed and properly served a motion for entry of respondent's default. The State Bar's motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel declaring the additional steps taken to provide notice to respondent. (Rule 5.80.) The motion also notified respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. Respondent did not file a response to the motion, and his default was entered on August 11, 2011.

On October 11, 2011, respondent filed a motion to vacate his default. However, he did not include with his motion a response to the charges set forth in the NDC regarding the instant matter, i.e., case No. 10-O-11036. Rather, respondent submitted a (Proposed) Response to Complaint, which was a response to charges in case No. 08-O-13068, an unrelated case over which this court had no jurisdiction. Therefore, the court issued an order granting respondent's motion, conditioned on his filing an answer by October 28, 2011, responsive to the subject

matter of the charges pending against him in the instant matter. The court order specifically warned that if the response was not timely filed, the default would not be set aside and the matter would proceed by default. The order was properly filed and served on the parties.

On October 26, 2011, a verified “Answer to the Complaint,” executed by respondent, was served on the State Bar by Sylvia Henry and was filed with the court on the following day. Respondent’s answer, however, was identical to respondent’s previously submitted (Proposed) Response to Complaint, which was nonresponsive to the charges in the NDC for case No. 10-O-11036.

On November 18, 2011, the State Bar filed and served a Motion for Entry of Default requesting that respondent’s default be entered on the grounds that respondent failed to rectify the defect in his response to the NDC. The State Bar correctly pointed out that respondent had failed to comply with the express condition attached to the vacating of his earlier entered default, i.e., that he was required to file a competent response to the charges in the NDC or the default would not be set aside. The motion again notified respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. The State Bar’s motion was filed and properly served on respondent at his membership records address by certified mail, return receipt requested.

Thereafter, the court issued an Order to Show Cause, stating that the answer filed by respondent on October 27, 2011, was responsive only to the charges in case No. 08-O-13068 and not to the charges in the case at issue, i.e., case No. 10-O-11036. The order, which was filed and properly served on the parties, directed them to show cause in writing on or before December 20, 2011, as to whether the court should strike respondent’s answer to the NDC and grant the State Bar’s November 18, 2011 motion for entry of default.

The State Bar filed a response to the order to show cause; respondent failed to do so.

On January 6, 2012, the court issued an Order Striking Answer, Entering Default and Enrolling Inactive. Specifically, the court entered respondent's default due to his failure to file a timely response to the NDC as required by rule 5.80 of the Rules of Procedure of the State Bar and his failure to respond to the court's Order to Show Cause. The order further notified respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. The order was properly filed and served on respondent at his membership records address by certified mail, return receipt requested. The court also entered respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e),³ effective three days after service of the order, and he has remained inactively enrolled since that time. The order was properly filed and served on respondent at his membership records address by certified mail, return receipt requested. The return receipt was returned to the State Bar Court, signed by Sylvia Henry.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file a motion to set aside default].) On July 11, 2012, the State Bar filed a petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with respondent since the default was entered; (2) there is one other disciplinary investigation matter pending against respondent; (3) respondent has a prior discipline; and (4) the Client Security Fund (CSF) has not made any payments resulting from respondent's misconduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on August 8, 2012.

³ All further statutory references are to the Business and Professions Code.

Respondent has a prior record of discipline.⁴ Pursuant to a Supreme Court order filed on October 19, 2011, respondent was suspended for three years, the execution of which was stayed, subject to respondent being suspended for a minimum of two years and remaining suspended until he makes and provides proof of specified restitution, provides proof to the court of his rehabilitation, fitness to practice, and learning and ability in the general law, and the court grants a motion to terminate his suspension. The misconduct involved seven client matters.

Respondent was found culpable of failing to obtain permission of a tribunal before withdrawing from employment; failing to report judicial sanctions; failing to obey court orders; failing to respond promptly to reasonable client status inquiries and failing to keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services; failing to perform legal services with competence; failing to return a client file upon termination of employment as requested by the client; failing to render appropriate accounts to a client; failing to refund unearned fees; and seeking an agreement with a plaintiff to withdraw a disciplinary complaint and not cooperate in a State Bar investigation. Respondent did not participate in this matter; and, his default was entered.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that respondent is culpable as charged and, therefore, violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

⁴ The court takes judicial notice of the pertinent State Bar Court records regarding this prior discipline, admits them into evidence and directs the Clerk to include copies in the record of this case.

Case Number 10-O-11036 (The Benichou Matter)

Count One – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) by failing to: (1) respond to discovery propounded by an opposing party; (2) respond to a motion to compel and a motion for terminating sanctions; (3) appear for a case management conference and hearings on a motion for terminating sanctions and an order to show cause; and (4) failing to serve the summons and complaint on any of the defendants, except for one.

Count Two - respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to communicate) by failing to inform his client of the motions to compel discovery and motions for terminating sanctions and by not responding to his client's telephone calls, emails or letters regarding the status of his case for four months.

Count Three – respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct (failure to return client papers/property) by failing, upon termination of employment to release a client's file to a client, despite the client's request that he do so.

Count Four - respondent willfully violated section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by not providing written responses to the State Bar's letters or otherwise cooperating in the State Bar investigation against him.

Disbarment is Mandated under the Rules of Procedure

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment must be recommended. In particular:

- (1) the NDC was properly served on respondent under rule 5.25;
- (2) respondent had actual notice of the proceedings, as he moved to set aside his default and submitted his (Proposed) Answer to Complaint, which was deficient. He was also aware

that his default would be entered if he did not correct that defective, submitted (Proposed) Answer to Complaint as he, thereafter, filed an Answer to the Complaint, albeit still deficient.

(3) the default was properly entered under rule 5.80; and

(4) the factual allegations in the NDC are deemed admitted by the entry of default and support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite actual notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court must recommend his disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Fred Rucker be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Fred Rucker, State Bar number 82754, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: October 26, 2012

RICHARD A. PLATEL
Judge of the State Bar Court